

OFFICE OF ENVIRONMENTAL ANALYSIS

SUPPLEMENTAL FINAL ENVIRONMENTAL ASSESSMENT

ENVIRONMENTAL RECOMMENDATIONS IN DOCKET NO. AB 290 (Sub-No. 286)

February 3, 2012

ABANDONMENT TYPE

The time for comments on the Environmental Assessment (EA) has expired in this:

() Notice of Exemption () Petition for Exemption (X) Regulated Abandonment

() **NO NEW COMMENTS WERE RECEIVED**

(X) **NEW COMMENTS WERE RECEIVED**

OEA served an Environmental Assessment (EA) for this adverse abandonment proceeding on December 22, 2006 for public review and comment. In the Final EA, dated February 1, 2007, OEA recommended one environmental condition to address the Section 106 process of the National Historic Preservation Act (NHPA) and concluded that the proposed action would not significantly impact the quality of the human environment. The Board denied the adverse abandonment in a decision served on February 14, 2008, indicating that Applicants might seek to reopen the proceeding should the transfer, rehabilitation, and restoration of operations not occur within a reasonable period of time, or should traffic fail to develop. As no evidence of any future need has materialized, the City of South Bend, IN, the Brothers of Holy Cross, Inc., the Sisters of the Holy Cross, Inc. and Holy Cross Village at Notre Dame¹ (collectively referred to as "Petitioners") filed a joint petition to reopen the proceeding on September 13, 2011.

On January 11, 2012, Petitioners filed a supplement to the joint petition to reopen stating that, based on their review, the environmental information submitted with their application in 2006 has not materially changed. In an abundance of caution, Petitioners sent a letter dated January 10, 2012 to all environmental consulting parties providing an update on the status of the proceeding and requesting additional comment, if any, by January 30, 2012. Additional comments were received from three parties.

The Department of the Army Corps of Engineers (Corps) has indicated that, based upon a

¹ Holy Cross Village at Notre Dame was not an applicant in the initial application, but has since joined the Applicants in their petition to reopen this proceeding. For that reason, this Supplemental Final Environmental Assessment distinguishes between the "Petitioners" (the four named parties who filed the petition to reopen) and the "Applicants" (the three named parties who filed the underlying application).

field inspection conducted on January 25, 2012 and review of the applicable National Wetland Inventory Maps, the rail line subject to this proceeding crosses wetlands subject to Corps jurisdiction. The Corps has determined that all potential wetlands are located below the raised bed of the rail line and/or are crossed by existing bridges and that salvage activities restricted within the limits of the existing raised bed would not require Corps authorization.

The South Bend and St. Joseph County Historic Preservation Commission (SBHC) has indicated that their position has not changed as the basic scope of the work has not changed. SBHC found in 2006 that, other than the landmarked (Ordinance No. 9234-01) steel girder railroad bridge crossing the St. Joseph River near Angela Boulevard, there are no historic sites or structures of interest within the area of potential effects. SBHC determined that the removal of tracks from the bridge would not have an adverse effect on that structure.

In 2006, the Indiana Department of Natural Resources, Division of Historic Preservation & Archaeology (SHPO) requested additional information from Applicants to facilitate the identification and analysis of historic properties in the project area. Applicants/Petitioners provided the additional information to the SHPO as requested. In a letter dated January 24, 2012, the SHPO has identified several buildings and structures within the probable area of potential effects that are on or may meet the criteria of eligibility for inclusion in the National Register of Historic Places (National Register). Based on the information provided, the SHPO has determined that the proposed abandonment and related salvage activities would not result in any alterations to the characteristics of those properties.

In terms of archaeological resources, the SHPO has indicated that prehistoric site 12Sj3 is located within the proposed project area and appears potentially eligible for inclusion in the National Register. It does not appear to the SHPO that abandonment or related salvage activities would affect the site. The SHPO recommends that any portions of the site outside or under the rail line be avoided during salvage and not be subjected to further archaeological investigations. In addition, the SHPO states that if any archaeological artifacts or human remains are uncovered during salvage activities, state law (Indiana Code 14-21-1-27 and 29) requires that the discovery must be reported to the SHPO within two (2) business days. OEA recommends that the Section 106 condition originally recommended in 2007 be modified and replaced with a new condition (set forth in the Conclusions section below) to address the SHPO's concerns about archaeological sites and artifacts in the project area.

Pursuant to the Section 106 regulations of the National Historic Preservation Act at 36 C.F.R. § 800.5(b), and following consultation with the SHPO and the public, we have determined that, if the recommended condition is imposed, the proposed abandonment would not affect historic properties listed in or eligible for inclusion in the National Register. The documentation for this finding, as specified at 36 C.F.R. § 800.11(e), consists of the railroad's historic report, all relevant correspondence, and the EA, which have been provided to the SHPO and made available to the public through posting on the Board's website at <http://www.stb.dot.gov>.

Conclusions

OEA recommends that the condition originally recommended in 2007 be replaced with the following new environmental condition, and that this condition be imposed upon any decision granting abandonment authority:

Applicants shall, prior to conducting any salvage activities, ensure that prehistoric site 12Sj3 is not adversely impacted by abandonment and related salvage activities. In the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during the railroad's salvage activities, Applicants will immediately cease all work and notify the Office of Environmental Analysis (OEA) and the Indiana Department of Natural Resources, Division of Historic Preservation & Archaeology (SHPO) pursuant to 36 C.F.R. § 800.13(b). OEA shall then consult with the SHPO, the Applicants, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

If this condition is imposed, OEA believes that the proposed action will not significantly affect the quality of the human environment.

OEA CONTACT: Ken Blodgett 202-245-0305

K48



Division of Historic Preservation & Archaeology • 402 W. Washington Street, W274 • Indianapolis, IN 46204-2739
Phone 317-232-1646 • Fax 317-232-0693 • dhpa@dnr.IN.gov



January 24, 2012

EI-18789

Richard Streeter
Law Office of Richard Streeter
5255 Partridge Lane, N.W.
Washington, D.C. 20016

Federal Agency: Surface Transportation Board ("STB")

Re: Information regarding abandonment of 3.2 miles of railroad between MP UV 0.0 and MP UV2.8 and between MP Z09.6 and MP Z010.5 (STB Docket #AB-290 [Sub-No. 286]; DHPA #1005)

Dear Mr. Streeter:

Pursuant to Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f) and 36 C.F.R. Part 800, the staff of the Indiana State Historic Preservation Officer ("Indiana SHPO") has conducted an analysis of the materials dated and received on January 9, 2012 for the above indicated project in South Bend, Portage Township, St. Joseph County, Indiana.

In terms of archaeological resources, prehistoric site, 12Sj3, is located within the proposed project area and appears potentially eligible for inclusion in the National Register of Historic Places. It does not appear that the rail removal will affect significant intact deposits of this site. However, all portions of the site outside or under the railroad must be avoided by all proposed project activities or subjected to further archaeological investigations.

If any archaeological artifacts or human remains are uncovered during construction, demolition, or earthmoving activities, state law (Indiana Code 14-21-1-27 and 29) requires that the discovery must be reported to the Department of Natural Resources within two (2) business days. In that event, please call (317) 232-1646. Be advised that adherence to Indiana Code 14-21-1-27 and 29 does not obviate the need to adhere to applicable federal statutes and regulations.

In regard to buildings and structures, we have identified the following properties within the probable area of potential effects, and we believe that they may meet the criteria of eligibility for inclusion in the National Register of Historic Places:

Munro House at 1213 Diamond Avenue (Site #141-598-25629)

Metcalf House at 1201 Diamond Avenue (Site #141-598-25631)

Holy Cross R.C. Church and School at 1050 Wilbur Street (Site #141-598-25769)

Northern Indiana College at 1600 Washington Avenue (Site #141-598-32032)

Additionally, we have identified the South Bend Brewing Association at 1636 Lincolnway West (Site #141-597-24220 per the *South Bend, St. Joseph County Interim Report*), which was listed in the National Register of Historic Places on September 16, 2001, within the probable area of potential effects.

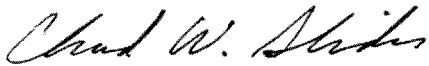
However, based on the information provided to our office, we believe that there will not be any alterations to the characteristics of the above identified historic properties qualifying them for inclusion in or eligibility for the National Register (*see* 36 C.F.R. § 800.16[i]).

Upon completing its own identification and evaluation efforts, it would be appropriate for the STB to analyze the information that has been gathered from the Indiana SHPO, the general public, and any other consulting parties and make the necessary determinations and findings. Refer to the following comments for guidance:

- 1) If the STB believes that a determination of "no historic properties affected" accurately reflects its assessment, then it shall provide documentation of its finding as set forth in 36 C.F.R. § 800.11 to the Indiana SHPO, notify all consulting parties, and make the documentation available for public inspection (36 C.F.R. §§ 800.4[d][1] and 800.2[d][2]).
- 2) If, on the other hand, the STB finds that an historic property may be affected, then it shall notify the Indiana SHPO, the public and all consulting parties of its finding and seek views on effects in accordance with 36 C.F.R. §§ 800.4(d)(2) and 800.2(d)(2). Thereafter, the STB may proceed to apply the criteria of adverse effect and determine whether the project will result in a "no adverse effect" or an "adverse effect" in accordance with 36 C.F.R., 800.5.

A copy of the revised 36 C.F.R. Part 800 that went into effect on August 5, 2004, may be found on the Internet at www.achp.gov for your reference. If you have questions about archaeological issues please contact Cathy Draeger-Williams at (317) 234-3791 or cdraeger-williams@dnr.IN.gov. If you have questions about buildings or structures please contact Miriam Burkett at (317) 233-3883 or mburkett@dnr.IN.gov. Additionally, in all future correspondence regarding the above indicated project, please refer to DHPA #1005.

Very truly yours,



James A. Glass, Ph.D.
Deputy State Historic Preservation Officer

JAG:MLB:CDW:cdw

cc: David C. Navecky, Environmental Protection Specialist, Surface Transportation Board

From: Richard Streeter
To: BlodgettK@stb.dot.gov
Subject: FW: AB-290 NSR Bridge to pedestrian/bike trail
Date: 01/23/2012 10:35 AM
Importance: High

Dear Ms. Hostetler, Thank you for your prompt response. Although I believe that the e-mail should suffice, I will forward this e-mail to the STB's Office of Environmental Analysis for confirmation. If they require a formal letter, I will let you know. Best regards, Richard

CONFIDENTIALITY NOTICE: This email and any attachments are for the exclusive and confidential use of the intended recipient. If you are not the intended recipient, please do not read, distribute or take action in reliance upon this message. If you have received this in error, please notify us immediately by return email and promptly delete this message and its attachments from your computer system. We do not waive attorney-client or work product privilege by the transmission of this message. **TAX ADVICE NOTICE:** Tax advice, if any, contained in this e-mail does not constitute a "reliance opinion" as defined in IRS Circular 230 and may not be used to establish reasonable reliance on the opinion of counsel for the purpose of avoiding the penalty imposed by Section 6662A of the Internal Revenue Code. The firm provides reliance opinions only in formal opinion letters containing the signature of a partner.

From: Catherine Hostetler [mailto:CHOSTETL@co.st-joseph.in.us]
Sent: Wednesday, January 18, 2012 4:43 PM
To: rhstreeter@gmail.com
Subject: AB-290 NSR Bridge to pedestrian/bike trail

Mr. Streeter, I have read through your material and e-mails. Since the basic scope of the work, the removal of the tracks on the steel bridge near Angela Boulevard, has not changed neither has my statement changed from 2006. Do you still need an official letter from me? In some places you ask only for responses if a position has changed.

Please advise.

Catherine D. Hostetler,

Director,
Historic Preservation Commission
of South Bend and St. Joseph
County, Indiana
574 235 9798



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
DETROIT DISTRICT, CORPS OF ENGINEERS
REGULATORY OFFICE
MICHIANA BRANCH
2422 VIRIDIAN DRIVE, SUITE 200
SOUTH BEND, INDIANA 46628

January 26, 2012

EI-18786
EE

Engineering & Technical Services
Regulatory Office
File No. LRE-2007-00130-171-J12

City of South Bend
227 West Jefferson Boulevard
South Bend, Indiana 46601

Re: Docket No. AB-290 (Sub-No. 286)

Dear Sir or Madam:

We recently received a request from Richard H. Streeter regarding the Corps of Engineers' jurisdiction over the abandonment of approximately 3.2 mile of an existing Norfolk Southern Railway Company railroad in South Bend running from St. Mary's College to near the intersection of Orange and College Streets.

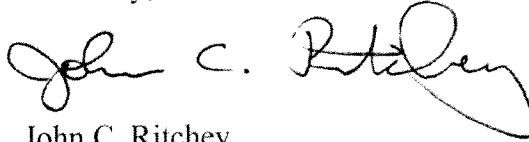
Work involving discharges of dredged and/or fill material in waters and wetlands falls under Corps of Engineers' regulatory jurisdiction. In all waters of the United States, including adjacent wetlands, any discharge of dredged and/or fill material must be authorized by the Department of the Army. The authority of the Corps of Engineers to regulate the discharge of dredged and/or fill material is contained in Section 404 of the Clean Water Act and regulations promulgated pursuant to that Act. Please be advised that filling and grading work, mechanized landclearing, the sidecasting of excavated material, and some forms of piling installation constitute or otherwise involve discharges of dredged and/or fill material under the Corps' regulatory authority.

Based upon a brief field inspection conducted on January 25, 2012 and review of the applicable National Wetland Inventory maps it would appear that the rail line in question crosses wetlands or waterways such as the St. Joseph River which are within the jurisdiction of the Corps. We determined that all potential wetlands and waterways are located below the raised bed of the rail line and/or are crossed by existing bridges. Work restricted within the limits of the existing raised bed would not require Department of the Army authorization.

Thank you for contacting the Corps prior to the initiation of any work. Should you have any questions, please contact me at the above address or telephone 574-232-1952 ext. 21962. Please refer to File No. LRE-2007-00130-171-J12 in all future communications with this office. Please note that the fact that a Corps permit is not required does not relieve you of the obligation to obtain required approvals from other agencies that may have regulatory jurisdiction. If you have any questions regarding this matter, please contact me at the above address or telephone 574-232-1952 ext. 21962 / E-Mail John.C.Ritchey@usace.army.mil. Please refer to File No. LRE-2007-00130-171-J12 in all future communications with this office.

We are interested in your thoughts and opinions concerning your experience with the Detroit District, Corps of Engineers Regulatory Program. If you are interested in letting us know how we are doing, you can complete an electronic Customer Service Survey from our web site at: <http://per2.nwp.usace.army.mil/survey.html>. Alternatively, you may contact us and request a paper copy of the survey that you may complete and return to us by mail or fax. Thank you for taking the time to complete the survey, we appreciate your feedback.

Sincerely,

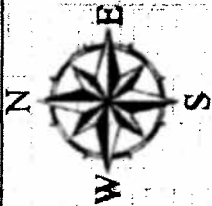
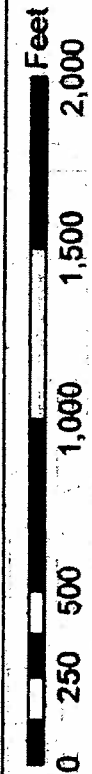
A handwritten signature in black ink, appearing to read "John C. Ritchey". The signature is fluid and cursive, with a large loop at the end.

John C. Ritchey
Project Manager
Michiana Branch

Enclosures

Copy Furnished

Brothers of Holy Cross, Inc.
Sisters of the Holy Cross, Inc.
Richard H. Streeter, Attorney at Law
IDEM, Office of Water Quality
IDNR, Division of Water



Muessel-Drewry's
Brewery National Register
Historic District

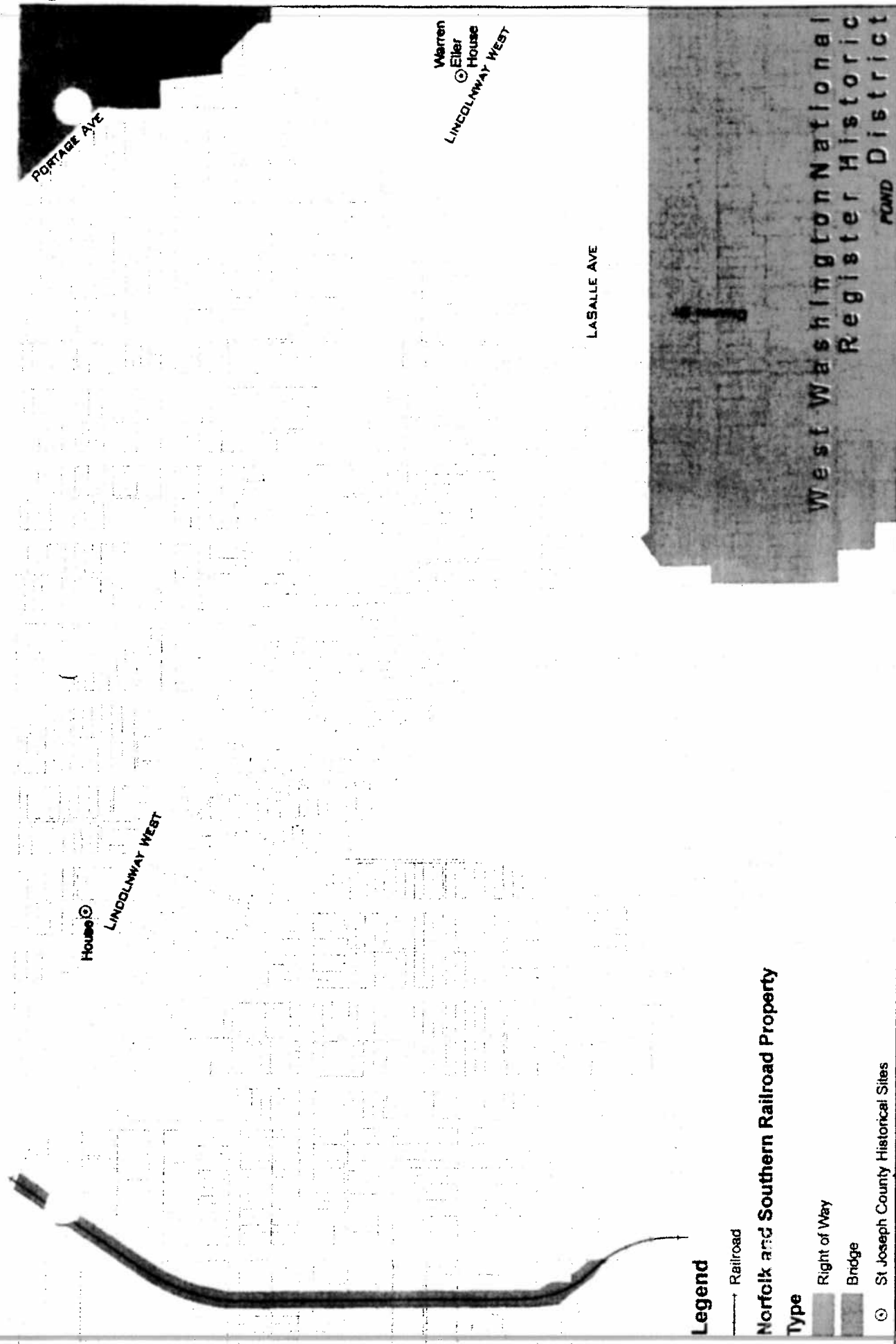
PORTAGE AVE

ST. JOSEPH RIVER
ST. JOSEPH
ANGELA BLVD

RETENTION BASIN
RETENTION BASIN
RETENTION BASIN

Riverside Drive Local
Historic District

Chapin Park National
Register Historic
District



Legend

— Railroad

Norfolk and Southern Railroad Property

Type

Right of Way

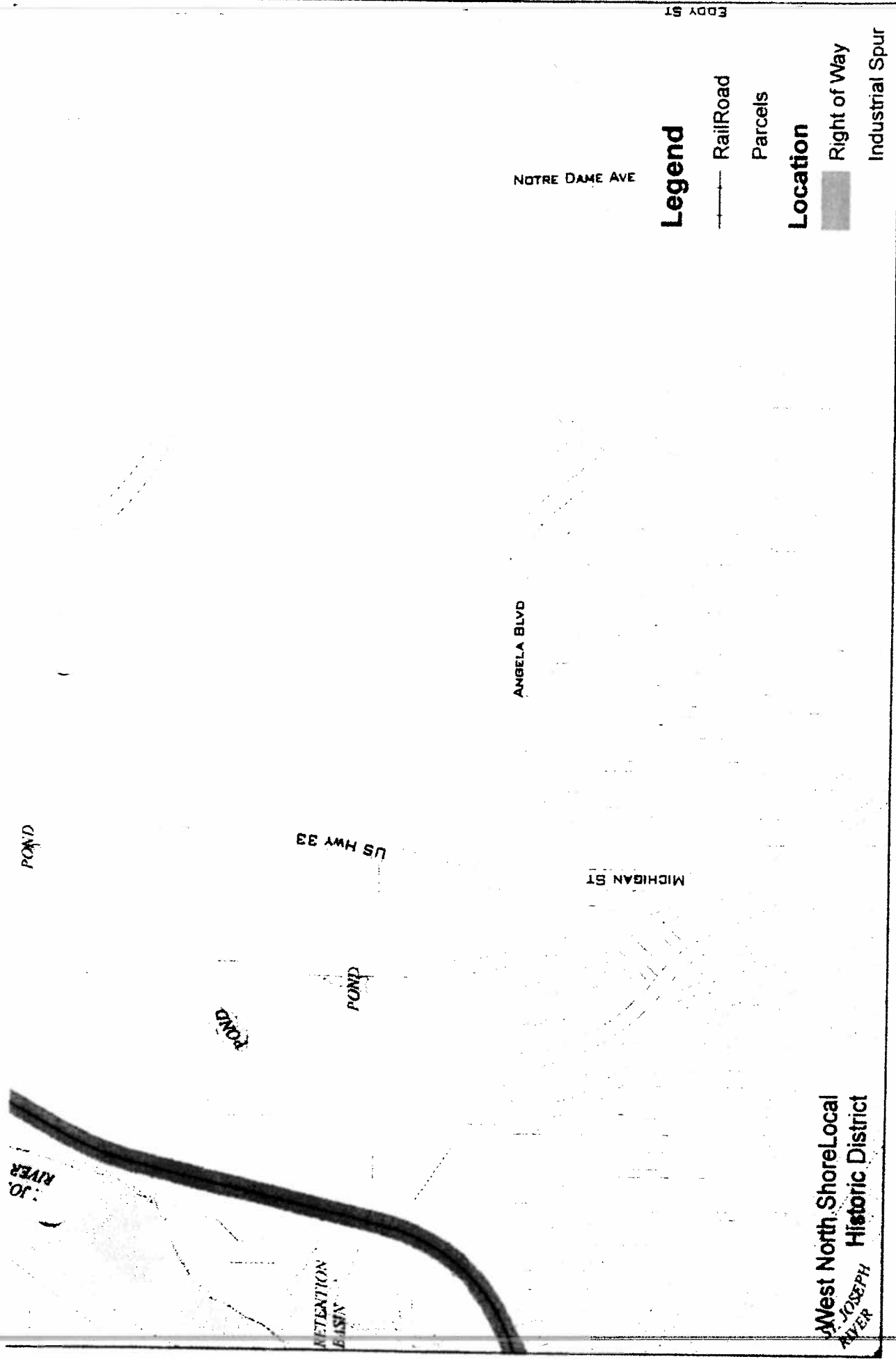
Bridge

○ St Joseph County Historical Sites



Railroad Removal Impact Map

3



Legend

RailRoad

Parcels

Location

Right of Way

Industrial Spur

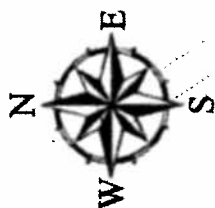
Railroad Removal Impact Map

West North Shore Local
Joseph River
Historic District



POW

**Alden
Hack
House** ④



0 275 550 1,100 1,650 2,200 Feet

PRIVATE
DITCH
POND

POND
POND
POND

POAND

POND

POND

POND
POND

POWID

Douglas Rd

11/20/2011

POND

EE AMH SN

CINCH

ST. MARY'S
LAKE

POND